IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 415 of 1987

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAMASHI DANA HEIRS OF DEC. KOLI BENABEN DANA

Versus

LAXMIBEN RAM. WD/OF DEC.KOLI DEVA BAVA

Appearance:

1. Civil Revision Application No. 415 of 1987

MR VH DESAI for Petitioners

MR SURESH M SHAH for Respondents Nos. 1-3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 22/10/2002

ORAL JUDGEMENT

This is a Revision Application preferred by the respondents-defendants under section 29 (2) of the Bombay Rents, Hotel & Lodging House Rates Control Act, 1947

[hereinafter referred to as, "the Rent Act"] against the judgment and order dated 26th September, 1986 passed by the learned Assistant Judge, Junagadh in Regular Civil Appeal No. 174 of 1983.

The disputed premises [hereinafter referred to as, "the suit premises"] is part of a residential building situated at Delvada, Taluka-Una, District-Junagadh. The said building belonged to one Vaikunthrai Revashanker Jani. Part of the building was leased to the plaintiffs and the suit premises was leased to one Bena Dana, the defendant on a monthly rent of Rs. 8/=. The said Vaikunthrai Jani sold the suit building to the plaintiffs on 6th April, 1977 under a registered sale deed {Exh. 28}. A notice of attornment was given to the defendant Bena Dana on 7th April, 1977 [Exh. 30]. Since the sale of the suit building in favour of the plaintiffs, the defendant Bena Dana was in arrears of rent. On 12th December, 1977, the plaintiffs gave notice of termination of tenancy and of demand of arrears of rent. The suit notice was not replied to by the defendant.

The plaintiffs instituted Regular Civil Suit No. 24 of 1978 in the Court of Civil Judge [JD], Una for recovery of the amount of rent due and the possession of the suit premises. The suit was contested by the defendant by filing written statement [Exh. 10]. She stated that she was not aware that the suit building was purchased by the plaintiffs. She denied that she was a tenant in arrears. She had paid the rent to the owner Vaikunthrai Jani, however, he had refused to accept the same. After the date of the notice, she had tendered the rent to the plaintiffs, however, the plaintiffs refused to receive the same. She also raised dispute as to the standard rent of the suit premises. Pending the suit, the defendant Bena Dana died. The present petitioners being his heirs and legal representatives were substituted as defendants.

The learned trial Judge under the judgment and order dated 20th August, 1983 dismissed the suit for recovery of possession of the suit premises, however, decreed the suit for recovery of amount of rent due. The learned Judge was pleased to hold that the rent of the suit premises was payable by the month; that on the date of the suit notice, the defendant was in arrears of rent for six months and more. On receipt of the suit notice, the defendant neglected to pay the amount of rent due within one month from the date of such receipt nor did she raise dispute as to the standard rent within such one

month. According to the learned Judge, the case was governed by section 12 (3)(a) of the Rent Act and the defendant was liable to be evicted from the suit premises. The learned Judge also held that the standard rent of the suit premises was Rs. 8/= per month. The learned Judge, however, held that it was not Bena Dana who was the tenant of the suit premises but the deceased husband of the said Bena Dana - one Karsan Dana was the tenant of the suit premises. On the death of the said Karsan Dana, the defendant-Bena Dana and all her children i.e., the present petitioners became the tenants in the suit premises as envisaged under section 5 (11)(c) (i) of the Rent Act. Hence, it was imperative for the plaintiffs to give notice of demand as envisaged under section 12 (2) of the Rent Act to all such tenants i.e., the defendant Bena Dana and all her children, the present petitioners.

Feeling aggrieved, the plaintiffs preferred Regular Civil Appeal No. 174 of 1983 in the Court of District Judge, Junagadh. The learned Assistant Judge, Junagadh was, under the impugned judgment and order dated 26th September, 1986, pleased to hold that it was the deceased Bena Dana who was the tenant of the suit premises and not the deceased Karsan Dana, as held by the trial Court. The finding of the learned trial Judge that the case was governed by section 12 (3)(a) of the Rent Act was confirmed and so also the finding as to the standard rent of the suit premises. The learned Judge allowed the appeal and passed decree for possession of the suit premises. Feeling aggrieved, the defendants have preferred the present Revision Application.

The issues that the defendant Bena Dana was in arrears of rent for six months and more and that the standard rent of the suit premises was Rs. 8/= per month were decided against the defendants by the learned trial Judge. The defendants, however, did not prefer appeal against the said findings. The said findings, therefore, cannot be challenged by the defendants in the present Revision Application. Even otherwise, the said findings have been confirmed by the lower Appellate Court. Thus, in view of the concurrent findings recorded by the Courts below, the same are required to be upheld. Further, it is indisputable that the defendant did not tender the amount of rent due within one month from the date of the receipt of the suit notice nor did she raise the dispute as to the standard rent within such one month. It is now well settled that raising of the dispute as to the standard rent after expiration of period of one month from the date of the receipt of the notice of demand

given under section 12 (2) of the Rent Act is of no consequence. Hence, in my view, both the courts below have correctly held that the case is governed by section 12 (3)(a) of the Rent Act.

The only question remains to be answered is whether it was the defendant Bena Dana or was it the deceased Karsan Dana, the husband of the deceased-Bena Dana, the tenant of the suit premises. As to the question whether the deceased Bena Dana was the contractual tenant of the suit premises or not, I see no reason to interfere with the finding recorded by the Court below. It should be noted that the defendant did not raise such a plea in her written statement Exh. 10. Further, the sale deed Exh. 28 also records that it was Bena Dana who was the tenant in the suit premises. The Court below has closely examined the oral evidence given on the issue and has held that there was nothing on record to hold that it was deceased Karsan Dana who was the contractual tenant in the suit premises and the defendant and all the petitioners herein were the statutory tenants of the suit premises, as envisaged under section 5 (11)(c)(i) of the Rent Act. This being a pure question of fact, decided on appreciation of evidence on record, the same cannot be interfered with in exercise of revisional jurisdiction under section 29 (2) of the Rent Act. Therefore also, the said finding is also required to be confirmed. Once, the finding as to the defendant Bena Dana being the tenant of the suit premises is confirmed, it was she alone who was required to be given notice as envisaged under sub-section (2) of Section 12 of the Rent Act. Such notice having been given and duly served upon the said defendant, the plaintiff cannot be non-suited for want of valid service of notice under section 12 (2) of the Rent Act.

No other point arises in this Revision Application. The Revision Application is dismissed with costs. Rule is discharged. Interim stay is vacated.

[Miss R.M Doshit, J.]

Prakash*